



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-06910

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

03/08/2017

Decision

WHITE, David M., Administrative Judge:

Applicant incurred delinquent debt from a failed restaurant business venture. He falsely denied the debt on his security clearance application. Resulting security concerns were not mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on March 4, 2015. On April 6, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on May 13, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 6, 2016. The case was assigned to me on July 18, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 29, 2016, setting the hearing date for August 16, 2016, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Hearing Exhibit I was also entered into the record. Applicant offered no documentary evidence, and testified on his own behalf. I granted Applicant's request to leave the record open until August 30, 2016, to permit him to submit additional evidence. On August 30, 2016, he submitted additional comments and documentary evidence by email. Department Counsel did not object to the admissibility of these statements or documents, which were admitted as Applicant's Exhibit (AE) A. The record closed as scheduled. DOHA received the transcript of the hearing (Tr.) on August 24, 2016.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor, where he has worked since November 2013. He is a high school graduate who has completed some college courses. He has no military service, but worked as a civilian employee of the U.S. Navy from 2004 through 2011. He held a security clearance during that employment, and is seeking to renew it. He is married with two children, ages 12 and 8. (GE 1; GE 2; Tr. 7-9, 28.)

In his Answer, Applicant admitted owing the debts alleged in SOR ¶¶ 1.a and 1.b, but claimed that they represented duplicate reports concerning one underlying delinquent debt. He denied intentionally falsifying his SF-86 when he denied having any delinquent debts or outstanding judgments. Applicant's admissions, including those contained in his July 8, 2015 interview with an Office of Personnel Management (OPM) investigator (GE 2), are incorporated in the following findings.

While he was working for the Navy, Applicant and a friend decided to open a small start-up restaurant business with a third friend of theirs, who had trained in French cuisine, serving as the chef. The restaurant opened in mid-February 2011 and went out of business at the end of August 2011. Throughout the time the restaurant was open, a long-planned project to replace a bridge close to its location made it difficult for patrons to park in the vicinity. Applicant withdrew about \$44,000 from his 401(k) retirement savings account, and his wife withdrew an additional \$25,000 from her 401(k) account, to invest in this business. He described his role in the restaurant as, "everything except cooking . . . paying bills, washing dishes, making drinks, bussing tables, sweeping lots . . . I just did whatever needed to be done. (Tr. 29-31.) In section 13A of his SF-86, Applicant described his position title at the restaurant as, "Owner/Dishwasher," and said his reason for leaving was, "Chef had a little nervous breakdown and freaked out, also we decided to pull the plug rather than pour more money into it." (GE 1 at 11-12.)

Applicant obtained a business credit card account from a major national bank for use in his restaurant business, for which he was also personally liable. The two debts alleged in SOR ¶¶ 1.a and 1.b were credit card accounts originated by this bank. Applicant asserted, but provided no documentary corroboration, that the smaller debt alleged in SOR ¶ 1.b was a \$5,000 sub-account for use by the chef as part of the primary \$10,000 credit account that was in his name. However, the collection agency that acquired these debts from the bank obtained separate court judgments against Applicant for the alleged debts in 2014 and 2016. In addition, the record credit reports reflect the larger debt (alleged in SOR ¶ 1.a) was a business account with a personal guarantee, and describe the smaller SOR ¶ 1.b debt as an individual account of Applicant's, with different account numbers. I am convinced that Applicant was not attempting to be deceitful about his understanding of these debts, but the record evidence indicates that they are separate debts involving different credit accounts that Applicant obtained from the bank. (GE 3; GE 4; Answer; Tr. 31-34, 41-43.)

When Applicant decided to close the restaurant, he also decided not to repay his credit card debt to this bank. He was still employed by the Navy, until later that year when he was voluntarily terminated, but chose to use his available funds to pay his outstanding business tax debts and take care of family expenses. He continued to receive credit card bills from the bank, but made no further contact or payments toward resolving the debt. In early 2014, the collection agency that obtained the judgments against Applicant contacted him concerning the debts. He offered to pay them around \$1,000 to resolve them, but was told they would not accept less than \$12,000 and, "basically told me to take a hike, they were going to court." (Tr. 34-37, 43-44.)

Applicant asserted that his denial of any outstanding judgments or delinquent debts on his March 2015 SF-86 was not a deliberate falsification because he did not know the collection agency had obtained the judgment against him in 2014. This explanation is not credible. He knowingly chose not to pay his credit card debts to the issuing bank starting in 2011, while he was still employed by the Navy, and engaged in unsuccessful negotiations to settle the debts with the collection agency in 2014 before they informed him they were going to court. (Answer; GE 2; Tr. 33-44.)

Applicant has consulted a bankruptcy attorney who has advised him to file for Chapter 7 bankruptcy relief. No evidence was submitted that such a filing has been initiated. Applicant's judgment debts remain unresolved. He provided a family budget plan that showed around \$6,000 in net monthly income and \$3,255 in living expenses. They incur significant medical expenses for their son's serious medical condition, and often have to take leave without pay because they have used all available sick leave to attend to his medical needs. Applicant described the situation as follows:

I have put together a budget of our normal bills. As I mentioned the medical bills vary widely from month to month based on my son's health and if we need to be hospitalized so I haven't included a line item for them. I have included . . . pay stubs . . . from my wife and I which demonstrate that when

we're both able to work full time (or close to that) we're able to meet our financial commitments; with the caveat that when [son] has to be hospitalized and we're with him we're on Leave Without Pay status as neither of us has a leave balance. (AE A.)

While the record was left open at his request, Applicant provided no evidence from supervisors, colleagues, associates, or family members concerning his character, trustworthiness, work performance, or track record with respect to following regulations and procedures relating to protection of sensitive information. There is no evidence that he has undergone financial counseling. (AE A; GE 2.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has accumulated approximately \$10,000 to \$15,000 in delinquent debt over the past five years that he remains unwilling or unable to resolve. This evidence raises both of the above disqualifying conditions and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent credit card debt was voluntarily incurred and knowingly left unpaid, despite efforts to collect it by the originating bank and subsequent collection agency. It remains unresolved, despite having been reduced to two legal judgments. The evidence does not establish significant mitigation under AG ¶ 20(a), since his financial problems are ongoing, and did not arise under unusual circumstances. There is insufficient evidence that the financial issues are attributable to circumstances beyond Applicant's control, or that he has acted responsibly to manage those financial obligations, which would establish mitigation under AG ¶ 20(b). His termination from Navy employment was voluntary, and he knew of his son's medical condition before he chose to incur the business debts that resulted in the current concerns.

Applicant has not participated in financial counseling, and the budget information he submitted did not demonstrate that his financial problems are under control. He did not initiate a good-faith effort to resolve his judgment debts, and established little, if any, mitigation under AG ¶¶ 20(c) or (d). Applicant admitted that all SOR-alleged debts are valid, so mitigation under AG ¶ 20(e) was neither asserted nor proven.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant falsely denied having any delinquent debts on his March 2015 SF-86. He admittedly knew about, and was attempting to deal with, his ongoing financial issues as recently as 2014. The evidence establishes a deliberate falsification as to this allegation.

AG ¶ 17 includes two conditions that could mitigate the security concerns arising under this guideline in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) does not provide mitigation because Applicant did not make a prompt effort to correct the omission of his delinquent debt before being confronted with the facts during his OPM interview. Intentionally withholding information from the Government is not a minor offense and casts serious doubt on an individual's judgment, so AG ¶ 17(c) does not support mitigation of this recent falsification.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant continues to owe about \$15,000 in voluntarily incurred delinquent debt that has been reduced to judgments, and that he said that he cannot afford to repay. He intentionally denied the existence of these financial issues on his most recent SF-86. His actions have neither decreased the potential for pressure, coercion, or duress, nor made the continuation or recurrence of security concerns unlikely. He did not demonstrate rehabilitation or remorse concerning these irresponsible and untrustworthy decisions. Overall, the record evidence creates doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge